

BORA LASKIN LAW LIBRARY



3 1761 04861 4911

International Environmental Law

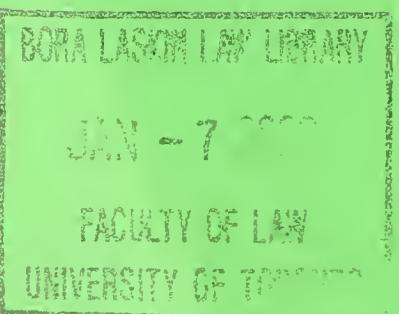
Professor Jutta Brunnée

2001/2002

University of Toronto

Faculty of Law

**These materials are reproduced solely for the use of students in the Faculty of Law,
University of Toronto.**



International Environmental Law

Professor Jutta Brunnée

2001/2002

University of Toronto

Faculty of Law

**These materials are reproduced solely for the use of students in the Faculty of Law,
University of Toronto.**



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/internationalenv00brun_0

International Environmental Law

Professor Jutta Brunnée

Table of Contents

1. Introduction: Course Themes

| | |
|---|-----|
| M. Akehurst, "Is International Law Really Law?" in <i>A Modern Introduction to International Law</i> , 6th ed. (London: Unwin & Hyman, 1987) at 1-11..... | 1 |
| R. Higgins, <i>Problems and Process, International Law and How We Use It</i> (Oxford: Clarendon Press, 1995) at 1-16..... | 7 |
| J. Brunnée, "Beyond Rio? The Evolution of International Environmental Law" 1993 20/1 <i>Alternatives</i> 16 at 16, 18-23 | 14 |
| M. List & V. Rittberger, "Regime Theory and International Environmental Management" in A. Hurrell & B. Kingsbury, eds. <i>The International Politics of the Environment</i> (Oxford: Clarendon Press, 1992) at 85-109 | 19 |
| A. Hasenclever, P. Mayer & V. Rittberger, <i>Theories of International Regimes</i> (Cambridge, Cambridge University, 1997) 1 at 1-7..... | 29A |
| G. Downs et al., "The Transformational Model of International Regime Design: Triumph of Hope or Experience?" (2000) 38 Col. J. of Transnt'l Law 465 at 465, 469-476 | 30 |
| UNEP, <i>Global Environmental Outlook</i> (2000) | 35 |
| J. Cameron, "Globalization and the Ecological State" in (1999) 8 <i>Reciel</i> 243 at 243-250..... | 43 |

2. Principles of International Environmental Law

| | |
|---|----|
| Trail Smelter Case (<i>United States v. Canada</i>) (1949) 3 U.N. Rep. Int'l Arb. Awards 1905, 1908, 1938, 1940, 1945, 1962, 1963-1966..... | 51 |
| <i>Corfu Channel (U.K. v. Albania)</i> (1949) I.C.J. Rep. 4, 22-23 | 54 |
| <i>Lake Lanoux (France v. Spain)</i> (1957) I.L.R. 101, 127-129, 140-141 | 55 |
| <i>Nuclear Tests (Australia v. France) Interim Protection, Order of June 22, 1973</i> I.C.J. Rep. 99, 99-106..... | 57 |
| International Court of Justice, <i>Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons</i> , 8 July 1996, paras. 27-37, 105..... | 59 |

| | |
|--|------|
| <i>Stockholm Declaration on the Human Environment</i> , U.N. Doc. A/Conf. 48/14; (1972) 11 I.L.M. 1416..... | 63 |
| <i>Rio Declaration on Environment and Development</i> (1992)..... | 66 |
| “Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development Adopted by the WCED Experts Group on Environmental Law” in World Commission on Environmental and Development, <i>Our Common Future</i> (New York: Oxford University Press, 1987) at 348-351 | 71 |
| IUCN, <i>Draft International Covenant on Environment and Development</i> (World Conservation Union, 1995) | 73 |
| G. Handl, “Environmental Security and Global Change: The Challenge to International Law” (1990) 1 <i>Y.B. Int'l Env. L.</i> 20-33 | 94 |
| Spraytech (Société d’arrosage) v. Hudson (Town), 2001 SCC 40..... | 98A |
| <u>3. Transboundary Pollution: Acid Rain</u> | |
| J. Regens & R. Rycroft, <i>The Acid Rain Controversy</i> (Pittsburgh: University of Pittsburgh Press, 1988) at 35-37, 39, 48-51 | 99 |
| T. Gehring, “International Environmental Regimes: Dynamic Sectoral Legal Systems” (1990) 1 <i>Y.B. Int'l Env. L.</i> 35-56..... | 103 |
| UNEP, <i>Global Environment Outlook</i> (2000) | 111 |
| M. Mittelstaedt, “Acid rain warning sounded” <i>The Globe and Mail</i> (26 March 2001) A7..... | 112A |
| B. McAndrew, “Utilities top new list of polluters” <i>The Toronto Star</i> (21 July 2001) A6..... | 112B |
| Questions for Treaty Analysis..... | 112C |
| <i>ECE Convention on Long-Range Transboundary Air Pollution</i> (1979)..... | 113 |
| <i>Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on the Reduction of Sulfur Emissions or Their Transboundary Fluxes by at Least 30 Percent</i> (1985)..... | 121 |
| <i>Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Further Reduction of Sulphur Emissions</i> (1988)..... | 126 |
| <i>Memorandum of Intent Between the Government of Canada and the Government of the United States of America Concerning Transboundary Air Pollution</i> (1980) 32 U.S.T. 2522..... | 134 |

| | |
|--|-----|
| <i>Agreement Between the Government of the United States of America and the Government of Canada on Air Quality</i> (1991) 30 I.L.M. 676 | 139 |
|--|-----|

4. Transboundary Pollution: Shared Freshwater Resources

| | |
|--|-----|
| G. Young, J. Dooge & J. Rodda, <i>Global Water Resources Issues</i> (New York: Cambridge University Press, 1994) at 1-3, 5, 7-13, 16-21 | 147 |
| International Law Association, <i>Helsinki Rules</i> (1966)..... | 157 |
| <i>1994 ILC Draft Articles on the Law of the Non-Navigational Uses of International Watercourses</i> , Arts. 5-7 | 161 |
| United Nations, <i>Convention on the Law of the Non-Navigational Uses of International Watercourses</i> , 21 May 1997, Preamble, Arts. 1-10, 20-25, 36..... | 163 |
| S. McCaffrey, “Water, Politics and International Law” in P. Gleick, ed. <i>Water in Crisis</i> (New York: Oxford University Press, 1993) at 97-100 | 168 |
| C. Bourne, “The International Law Commission's Draft Articles on the Law of International Watercourses: Principles and Planned Measures” (1992) 3 Colo. J. Int'l Env. L. & Pol'y 82-92 | 172 |
| J. Lammers, “Commentary of Papers Presented by Charles Bourne and Alberto Szekely” (1992) 3 Colo. J. Int'l Env. L. & Pol'y 103-109 | 178 |
| G. Handl, “The International Law Commission's Draft Articles on the Law of International Watercourses (General Principles and Planned Measures): Progressive or Retrogressive Development of International Law?” (1992) 3 Colo. J. Int'l Env. L. & Pol'y 129-133 | 181 |
| <i>ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes</i> (1992) 31 I.L.M. 1312..... | 184 |
| J. Brunnée & S. Toope, “Environmental Security and Freshwater Resources: a Case for International Ecosystem Law” (1994) 5 Y.B. Int'l Env. L. 42-47, 53-75 | 197 |
| International Court of Justice, <i>Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia)</i> , 25 September 1997, paras. 39-459, 72-79, 82-87, 135-147 | 206 |
| A.E. Boyle, “The Gabcikovo-Nagymaros Case: New Law in Old Bottles” at 13-20 | 214 |

5. Global Commons: Ozone Depletion

| | |
|--|------|
| M. Lemonick, "The Ozone Vanishes" <i>TIME</i> (17 February 1992) 40..... | 219 |
| UNEP, <i>Global Environmental Outlook</i> , (2000)..... | 222 |
| D. Albritton, "Dealing with Uncertainty: A Challenge for Science" in W. Land, ed. <i>The Ozone Treaties and Their Influence on the Building of International Environmental Regimes</i> , Austrian Federal Ministry for Foreign Affairs 37-42 | 224 |
| F. Stewart, "The Role of the South in a Chaotic World" in A. Carty & H. Singer, eds., <i>Conflict and Change in the 1990s: Ethics, Laws and Institutions</i> (Hounds mills, Hamshire: Macmillan, 1993)..... | 227 |
| K. Mickelson, "South, North, International Environmental Law and International Environmental Lawyers" (2001)..... | 235A |
| Global Commons: Exploring the Ozone Regime..... | 235H |
| <i>Vienna Convention for the Protection of the Ozone Layer</i> (1985) | 236 |
| Montreal Protocol on Substances that Deplete the Ozone Layer (1987) as adjusted and amended in 1990, 1992, & 1995..... | 245 |
| | |
| <u>6. Conservation of Natural Resources: Forests</u> | |
| UNEP, <i>Global Environmental Outlook</i> , (2000)..... | 262 |
| World Resources 2000-2001, <i>People and Ecosystems: The Fraying Web of Life</i> | 264 |
| D. Tarlock, "Exclusive Sovereignty versus Sustainable Development of a Shared Resource: The Dilemma of Latin American Rainforest Management" (1997) 32 <i>Texas Intl L. J.</i> 37-66 | 266 |
| J. Brunnée, "A Conceptual Framework for an International Forests Convention: Customary Law and Emerging Principles" in Canadian Council on International Law, <i>Global Forests and International Environmental Law</i> at 55-62..... | 280 |
| United Nations Conference on Environment and Development, <i>Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests</i> | 282 |
| Ministerial Conference on the Protection of Forests in Europe, <i>General Guidelines for the Sustainable Management of Forests in Europe</i> , Resolutions H1, H3 and H4 | 290 |
| Report of the Secretary General, "Category III: International Arrangements and Mechanisms to Promote the Management, Conservation and Sustainable Development of All Types of Forests" | |

| | |
|---|-----|
| E/Cn.17/IFF/2000/..., Advance Unedited Version prepared for Fourth Session of the Intergovernmental Forum on Forests | 298 |
|---|-----|

| | |
|--|-----|
| International Institute for Sustainable Development, <i>Summary of the Fourth Session of The Intergovernmental Forum on Forests</i> , 31 January – 11 February 2000, available at http://www.iisd.ca/vol13/enb1366e.html1-3,18-33 | 315 |
|--|-----|

7. Global Commons: Climate Change

| | |
|---|-----|
| Robert T. Watson, “Presentation at the Sixth Conference of Parties to the United Nations Framework Convention on Climate Change” (13 November 2000), available at http://www.ipcc.ch/press/sp-cop6.htm | 322 |
|---|-----|

| | |
|--|-----|
| J.W. Anderson, “The UN Framework Convention on Climate Change” in <i>The Weathervane Guide to Climate Policy</i> | 330 |
|--|-----|

| | |
|--|-----|
| <i>United Nations Framework Convention on Climate Change</i> , available at http://www.unfccc.de/resource/conv/conv.html | 332 |
|--|-----|

| | |
|--|-----|
| J.W. Anderson, “A Brief History of the Kyoto Protocol” in <i>The Weathervane Guide to Climate Policy</i> | 347 |
|--|-----|

| | |
|--|-----|
| J.W. Anderson, “Overview of the Kyoto Protocol” in <i>The Weathervane Guide to Climate Policy</i> | 353 |
|--|-----|

| | |
|--|-----|
| <i>Kyoto Protocol to the United Nations Framework Convention on Climate Change</i> , available at http://www.unfccc.de/resource/docs/convkp/kpeng.html | 355 |
|--|-----|

| | |
|--|------|
| Calculating Compliance with Assigned Amounts (targets) | 368A |
|--|------|

| | |
|---|-----|
| R.J. Kopp et al., “Unresolved Issues” in <i>The Weathervane Guide to Climate Policy</i> | 369 |
|---|-----|

| | |
|--|-----|
| S. Dunn, “Can the North and South Get in Step?” <i>Worldwatch Magazine</i> (November/December 1998), available at http://www.worldwatch.org/mag/1998/98-6.html | 372 |
|--|-----|

| | |
|--|-----|
| C. Flavin, “Last Tango in Buenos Aires” <i>Worldwatch Magazine</i> (November/December 1998), available at http://www.worldwatch.org/mag/1998/98-6.html | 377 |
|--|-----|

8. Cross-Cutting Issues: Trade and Environment

| | |
|--|------|
| (1994) Agreement Establishing the World Trade Organization | 380A |
|--|------|

| | |
|---|-----|
| J. Atik, “Two Hopeful Readings of <i>Shrimp-Turtle</i> ” (1998) 9 Yb. Of Int’l Env. Law 6-12 | 381 |
|---|-----|

| | |
|--|------|
| D. Brack, "The <i>Shrimp-Turtle Case: Implications for the Multilateral Environmental Agreement-World Trade Organization Debate</i> " (1998) 9 Yb. Of Int'l Env. Law 13-19 | 384 |
| S. Charnovitz, "The Supervision of the Health and Biosafety Regulation by World Trade Rules" (2000) 13 Tulane Environ. Law J. 271-302..... | 388 |
| WTO, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WTO Doc. WT/DS26/AB/R. WT/DS48/AB/R..... | 404A |
| <i>Cartagena Protocol on Biosafety to the Convention on Biological Diversity</i> | 405 |
| E. Masood, "Against the Grain" <i>New Scientist</i> (14 January 2000) | 407 |
| <u>9. Cross-Cutting Issues: Compliance and Enforcement</u> | |
| UNCED Preparatory Committee, Decision 3/25, A/46/48, vol. II, <i>Criteria for Evaluating the Effectiveness of Existing Agreements or Instruments</i> | 409 |
| L. Henkin, <i>How Nations Behave: Law and Foreign Policy</i> (New York: Frederick A. Praeger, 1968) 39-50..... | 413 |
| ILC, <i>Report on the Work of its 52nd Session</i> , A/CN.4/L.602 | 418 |
| M. Koskenniemi, "Breach of Treaty or Noncompliance? Reflections on the Enforcement of the Montreal Protocol" (1992) 3 Yb. of Int'l. Env. Law 123-128..... | 423 |
| A. Handler Chayes, Abram Chayes and R.B. Mitchell, "Active Compliance Management in Environmental Treaties" in W. Land, ed., <i>Sustainable Development and International Law</i> (London: Kluwer, 1995) 75-89 | 425 |
| G. Downs <i>et al.</i> , "Is the Good News About Compliance Good News About Cooperation?" in (1996) 50 International Organization..... | 433 |
| Non-Compliance Procedures, <i>Montreal Protocol on Substances that Deplete the Ozone Layer</i> | 438 |
| G. Handl, "Compliance Control Mechanisms and International Environmental Obligations" (1997) 5 Tulane J Int'l & Comp L 29 | 441 |
| Procedures and mechanisms on compliance under the Kyoto Protocol, FCCC/CP/2001/L.21 | 452 |
| D. Bodansky, "Customary (And Not So Customary) International Environmental Law" (1995) 3 Indiana J. Global Leg. Studies 112-119..... | 465 |

Further Reading – Selected Sources

1. Introduction – Course Themes

International Environmental Law as Branch of Public International Law

P.W. Birnie & A.E. Boyle, *International Law and the Environment* (Oxford: Clarendon Press, 1992) Ch. 1 [2nd ed., 1999, pending].

D. Hunter *et al.*, eds., *International Environmental Law and Policy* (New York: Foundation Press, 1998).

A. Kiss & D. Shelton, *International Environmental Law* (Dobbs Ferry: Transnational Publishers, 1991) [2nd ed., 1999, pending].

P. Sands, *Principles of International Environmental Law*, Vol. I [Frameworks, Standards and Implementation], (Manchester: Manchester University Press, 1994) c. 4.

P. Sands, “International Environmental Law Ten Years On” (1999) 8 Review of European and International Environmental Law 239.

O. Schachter, “The Emergence of International Environmental Law” (1991) 44 Journal of International Affairs 457.

Challenges to International Environmental Law

J.S. Anaya, “Environmentalism, Human Rights and Indigenous Peoples: A Tale of Converging and Diverging Interests” (1999-2000) 7 Buff. Envtl. L.J. 1.

D.T. Hornstein, “Environmental Sustainability and Environmental Justice at the International Level: Traces of Tension and Traces of Synergy” (1999) 9 Duke Envtl. L. & Pol'y F. 291.

D.W. Greig, “Sovereignty, Territory and the International Lawyer’s Dilemma” (1988) 26 Osgoode Hall L.J. 127.

Harvard Law Review, “Developments in the Law - International Environment Law” (1991) 104 Harv. L. Rev. 1484 at 1484-1639.

C. Joyner & G. Little, “It’s not Nice to Fool Mother Nature! The Mystique of Feminist Approaches to International Environmental Law” (1996) 14 Boston U. Int’l L.J. 223.

K. Mickelson, “South, North, International Environmental Law, and International Environmental Lawyers” (2000) 11 Yearbook of International Environmental Law 52

J.G. Ruggie, "Territoriality and Beyond: Problematique" (1996) 47 International Organization 139.

C. Stone, *The Gnat is Older than Man: Global Environment and Human Agenda* (Princeton: Princeton University Press, 1993).

J. Wiener, "On the Political Economy of Global Environmental Regulation" (1999) 87 Geo. L.J. 749.

Typology of International Environmental Problems

United Nations Environment Programme, *Global Environment Outlook 2000* (1999) [available at <http://grid2.cr.usgs.gov/geo2000/english/>]

World Resources Institute, *World Resources 2000-2001* (2000) [available at <http://www.wri.org/>]

Normative or Regime-Oriented Approaches

R. Beck et al., *International Rules: Approaches from International Law and International Relations* (New York: Oxford University Press, 1996).

D. Bodansky, "Customary (And Not so Customary) International Environmental Law" (1995) 3 Indiana J. Global Leg. Stud. 105.

G.W. Downs et al., "The Transformational Model of International Regime Design: Triumph of Hope or Experience?" 38 Colum. J. Transnat'l L. 465.

M. Finus, *Game Theory and International Environmental Cooperation* (Northampton, Mass.: Edward Elgar, 2000).

P.M. Haas, "Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control" (1989) 43 International Organization 377

M. Koskeniemi, *From Apology to Utopia: The Structure of Legal Argument* (Helsinki: Finnish Lawyers' Publishing Company, 1989).

V. David et al., eds., *The Effectiveness of International Environmental Commitments: Theory and Practice* (1998).

O.R. Young, ed., *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms* (1999).

2. Principles of International Environmental Law

Established Principles

P.W. Birnie & A.E. Boyle, *International and the Environment* (Oxford: Clarendon Press, 1992) c. 3 [2nd ed., 1999, pending].

G. Handl, "Territorial Sovereignty and the Problem of Transnational Pollution" (1975) 69 A.J.I.L. 50.

P. Sands, *Principles of International Environmental Law*, vol. 1 (Frameworks, Standards and Implementation), (Manchester: Manchester University Press, 1994) c. 6.

L.B. Sohn, "The Stockholm Declaration on the Human Environment" (1973) 14 Harv. Int'l L.J. 423.

Emerging Principles

A. Boyle & D. Freestone, *International Law and Sustainable Development: Past Achievements and Future Challenges* (1999).

D. Bodansky, "Scientific Uncertainty and the Precautionary Principle" (1991) 33 *Environment* 4.

E.B. Weiss, *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (Dobbs Ferry, N.Y.: Transnational Publishers, 1989).

D. Freestone & E. Hey, eds. *The Precautionary Principle and International Law: The Challenge of Implementation* (The Hague: Kluwer Law International, 1996) c. 3-5.

W. Lang, ed. *Sustainable Development and International Law* (London: Graham & Trotman, 1995) c. 3-5.

G. Maggio, "Inter/Intra-Generational Equity: Current Applications under International Law for Promoting Sustainable Development of Natural Resources" (1997) 4 Buffalo Environmental Law Journal 161.

M. McCloskey, "The Emperor has no Clothes: The Conundrum of Sustainable Development" (1999) 9 Duke Envtl. L. & Pol'y F. 153.

O. McIntyre & T. Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997) 9 Journal of Environmental Law 221.

M. Pallemans, "International Environmental Law in the Age of Sustainable Development: A Critical Assessment of the UNCED Process" (1996) 15 Journal of Law and Commerce 623.

Symposium on *The Case Concerning Gabčíkovo-Nagymaros Project* (1997) 8 Y.B. Int'l Env. L. 3-50.

Symposium on *The Southern Bluefin Tuna Cases* (1999) 10 Y.B. Int'l Env. L. 3-47.

D.A. Wirth, “The Rio Declaration on Environment and Development: Two Steps Forward and One Back, Or Vice Versa?” (1995) 29 Geo. L. Rev. 599

World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).

Shifting Paradigms - From Sovereignty to Ecosystem Focus

M. Belsky, “Using Legal Principles to Promote the “Health” of an Ecosystem” (1996) 3 Tulsa Journal of Comparative & International Law 183 at 200.

J. Brunnée & S.J. Toope, “Environmental Security and Freshwater Resources: A Case for International Ecosystem Law” (1994) 5 Y.B. Int'l Env. L. 41.

J. Brunnée & S.J. Toope, “Environmental Security and Freshwater resources: Ecosystem Regime Building” (1997) 91 A.J.I.L. 26.

L.B. Dworsky, “Ecosystem Management: Great Lakes Perspectives” (1993) 33 Natural Resources Journal 347.

C. Payne, “The Ecosystem Approach: New Departures for Land and Water, Foreword” (1997) 24 Ecology Law Quarterly 619.

3. Transboundary Pollution – Acid Rain

Typology of the Problem

J. Brunnée, *Acid Rain and Ozone Layer Depletion: International Law and Regulation* (Dobbs Ferry: Transnational Publishers, 1988) at 5-34.

H.F. French, “Clearing the Air” in Lester R. Brown *et al.*, eds., *State of the World 1990* (New York: W.W. Norton & Company, 1990) at 98.

J. McCormick, *Acid Earth: The Global Threat of Acid Pollution* (London: Earthscan, 1985).

Role of Customary Law and Treaties

N. Bankes & J.O. Saunders, “Acid Rain: Multilateral and Bilateral Approaches to Transboundary Pollution under International Law” (1984) 33 University of New Brunswick Law Review 155.

J. Brunnée, *Acid Rain and Ozone Layer Depletion: International Law and Regulation* (Dobbs Ferry: Transnational Publishers, 1988).

4. Transboundary Pollution – Shared Freshwater Resources

Typology of the Problem

R. Clarke, *Water: The International Crisis* (Cambridge, Mass.: MIT Press, 1993).

P.H. Gleick, ed., *Water in Crisis: A Guide to the World's Fresh Water Resources* (New York: Oxford University Press, 1993).

G.J. Young, J.C.I. Dooge & J.C. Rodda, eds., *Global Water Resources Issues* (Cambridge: Cambridge University Press, 1994).

The Role of Customary Law and Treaties

J. Albert, "Rethinking the Management of Transboundary Freshwater Resources: A Critical Examination of Modern International Law and Practice" (2000) 24 Natural Resources Forum 21

P.H.F. Bekker, "Gabcikovo-Nagymaros Project" (1998) 92 A.J.I.L. 273.

P.W. Birnie & A.E. Boyle, *International Law and the Environment* (Oxford: Clarendon Press, 1992) at 215-250 [2nd ed., 1999, pending].

C. Bourne, "International Law on Shared Fresh Water Resources" (1986) Queen's Law Journal (Special Issue on International Law) 342.

X. Fuentes, "Sustainable Development and the Equitable Utilization of International Watercourses" (1998) 69 British Yearbook of International Law 119.

G. Goldenmann, "Adapting to Climate Change: A Study of International Rivers and Their Legal Arrangements" (1990) 17 Ecology Law Quarterly 741.

S. McCaffrey & M. Sinjela, "The 1997 United Nations Convention on International Watercourses" (1998) 92 A.J.I.L. 97.

P. Wouters, "An Assessment of Recent Developments in International Watercourse Law Through the Prism of the Substantive Rules Governing Use Allocation" (1996) 36 Natural Resources Journal 417.

The Work of the International Law Commission

"Doman Colloquium on the Law of International Watercourses" (1992) 3 Colorado Journal of International Environmental Law and Policy 1 – 333.

G. Hafner & H. Pearson, "The Work of the International Law Commission in the Field of the Environment" (2000) 11 Y.B. Int'l Env. L. 3.

S.C. McCaffrey, "An Assessment of the Work of the International Law Commission" (1996) 36 Natural Resources Journal 297.

A. Nollkaemper, "The Contribution of the International Law Commission to International Water Law: Does it Reverse the Flight from Substance?" (1996) 27 Netherlands Yearbook of International Law 39.

The UN Watercourses Convention

E. Hey, "The Watercourses Convention: To What Extent Does it Provide a Basis for Regulating Uses of International Watercourses?" (1998) 7 Review of European and International Environmental Law 291.

A. Schwabach, "The United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, Customary International Law, and the Interests of Developing Upper Riparians" (1998) 33 Tex. Int'l. L.J. 257.

A. Tanzi, "The UN Convention on International Watercourses as a Framework for the Avoidance and Settlement of Waterlaw Disputes" (1998) 11 Leiden Journal of International Law 441.

Sharing Freshwater and Environmental Security

A.K. Biswas, "Shared Natural Resources: Future Conflicts or Peaceful Development?" in R.J. Dupuis, ed., *The Settlement of Disputes on Natural Resources* (New York: Martinus Nijhoff, 1983) at 197.

J. Brunnée & S.J. Toope, "Environmental Security and Freshwater Resources: A Case for International Ecosystem Law" (1994) 5 Y.B. Int'l Env. L. 41.

J. Brunnée & S.J. Toope, "Environmental Security and Freshwater Resources: Ecosystem Regime Building" (1997) 91 A.J.I.L. 26.

A. Elhance, *Hydro-Politics in the Third World: Conflict and Cooperation in International River Basins* (1999).

T. Homer-Dixon, "Environmental Scarcities and Violent Conflict: Evidence from Cases" (1994) 19 International Security 5.

C. Kukk & D. Deese, "At the Water's Edge: Regional Conflict and Cooperation over Freshwater" (1996) 1 UCLA Journal of International Law & Foreign Affairs 21.

N. Tadros, "Shrinking Water Resources: The National Security Issue of the Century" (1996-1997) 17 Northwestern Journal of International Law and Business 1091.

P. Gleick, "Water and Conflict: Fresh Water Resources and International Security" (1993) 18 International Security 79.

S. Saad, "For Whose Benefit? Redefining Security" (1991) 2 Ecodecision 59.

J.M. Trolldalen, *International Environmental Conflict Resolution: The Role of the United Nations* (Oslo: World Foundation for Environment and Development, 1992) c. I & 5.

5. Global Commons – Ozone Depletion

Typology of Problem

J. Brunnée, *Acid Rain and Ozone Layer Depletion: International Law and Regulation* (Dobbs Ferry: Transnational Publishers, 1988) at 34-49.

N.J. Molina & F.S. Rowland, "Stratospheric Sink for Chlorofluoromethanes: Chlorine Atom Catalyzed Destruction of Ozone" (1974) 249 Nature 811.

J.G. Titus, ed. *Effects of Changes in Stratospheric Ozone and Global Climate*, [vol. 1: Overview] (U.S. Environmental Protection Agency, 1986).

Regulating Uncertainty

D. Bodansky, "Scientific Uncertainty and the Precautionary Principle" (1991) 33 Environment 4.

E. Hey, "The Precautionary Concept in Environmental Policy and Law: Institutionalizing Caution" (1992) 4 Georgetown International Environmental Law Review 303.

D. Freestone & E. Hey, eds., *The Precautionary Principle and International Law: The Challenge of Implementation* (The Hague: Kluwer Law International, 1996) c. 5-9.

O. McIntyre & T. Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997) 9 Journal of Environmental Law 221.

South-North Dimension

D. French, "Developing States and International Environmental Law: The Importance of Differentiated Responsibilities" (2000) 49 Int'l & Comp. L.Q. 35.

B. Ling, "Developing Countries and Ozone Layer Protection: Issues, Principles and Implications" (1992) 6 Tulane Environmental Law Journal 91.

K. Mickelson, "South, North, International Environmental Law, and International Environmental Lawyers" (2000) 11 Y.B. Int'l Env. L. 52.

J.B. Tripp, "The UNEP Montreal Protocol: Industrialized and Developing Countries Sharing the Responsibility for Protecting the Stratospheric Ozone Layer" (1988) 20 New York University Journal of International Law and Politics 733.

V. Williams, "Ozone Depletion, Developing Countries, and Human Rights: Seeking Better Ground on Which to Fight for Protection of the Ozone Layer" 10 Journal of Natural Resources & Environmental Law 83.

The Role of Customary Law & Treaties

J.S. Bales, "Transnational responsibility and Recourse for Ozone Depletion" (1996) 19 Boston College International & Comparative Law Review 259.

R. Benedick, *Ozone Diplomacy: New Directions in Safeguarding the Planet* (Cambridge, Mass.: Harvard University Press, 1991).

J. Brunnée, *Acid Rain and Ozone Layer Depletion: International Law and Regulation* (Dobbs Ferry: Transnational Publishers, 1988).

D.D. Caron, "Protection of the Stratospheric Ozone Layer and the Structure of International Environmental Law-Making" (1991) 14 Hastings Int'l & Comp.Law Review 755.

D. Hurlbut, "Beyond the Montreal Protocol: Impact on Non-Party States and Lessons for Future Environmental Protection Regimes" (1993) 4 Colorado Journal of International Environmental Law & Policy 344.

T. Jones, "Implementation of the Montreal Protocol: Barriers, Constraints and Opportunities" (1997) 3 Environmental Lawyer 813.

6. Conservation of Natural Resources – Forests

Typology of Problem

K. Ramakrishna & G.M. Woodwell, eds., *World Forests for the Future: Their Use and Conservation* (New Haven: Yale University Press, 1993).

Sovereign Resource or Global Commons?

F.P. Anderson, "Of Herdsmen and Nation States: The Global Environmental Commons" 5 American University Journal of International Law & Policy 679.

B. Boer, "Developments in International Environmental Law Relating to Forests" (1997) 14 Environmental and Planning Law Journal 378.

R. Eshbach, "A Global Approach to the Protection of the Environment: Balancing State Sovereignty and Global Interests" (1994) 4 *Temple Intl & Comp. L.J.* 271.

"Environment vs. Development?"

A. Diaz, "Permanent Sovereignty over Natural Resources" (1994) 24 *Environmental Policy and Law* 157.

K. Mickelson, "Seeing the Forest, the Trees and the People: Coming to Terms With Developing Country Perspectives on the Proposed Global Forests Convention" in Canadian Council on International Law, ed. *Global Forests and International Environmental Law* (London: Kluwer Law International, 1996) 239

J. Ntambirweki, "The Developing Countries in the Evolution of an International Environmental Law" (1991) 14 *Hastings Int'l & Comp. L. Rev.* 905.

R. Khooshie Lal Panjabi, "The South and the Earth Summit: The Development / Environment Dichotomy" (1992) 11 *Dickinson Journal of International Law* 77.

F.X. Perrez, "The Relationship Between "Permanent Sovereignty" and the Obligation not to Cause Transboundary Environmental Damage" (1996) 26 *Environmental Law* 1187.

P.M. Saunders, "Development Assistance Issues Related to a Convention on Forests" in Canadian Council on International Law, ed., *Global Forests and International Environmental Law* (London: Kluwer Law International, 1996) 265

H. Shue, "The Unavoidability of Justice" in A. Hurrell & B. Kingsbury, eds., *The International Politics of the Environment* (Oxford: Clarendon Press, 1992) at 373.

L.C.W. Wee, "Debt-for-Nature Swaps, A Reassessment of Their Significance in International Environmental Law" (1994) 6 *Journal of Environmental Law* 57.

Designing a Forests Convention

Canadian Council on International Law, ed., *Global Forests and International Environmental Law* (London: Kluwer Law International, 1996).

N. Chalifour, "Global Trade Rules and the World's Forests: Taking Stock of the World Trade Organization's Implications for Forests" (2000) 12 *Geo. Int'l Envtl. L. Rev.* 575.

J. Janssen & E. Mohr, "The Window of Opportunity for Rain Forest Protection: The Time Remaining in the Rio Process" (1998) 10 *International Environmental Affairs* 40.

R. Tarasofsky, *The International Forests Regime: Legal and Policy Issues* (Bonn: IUCN, 1995).

D.G. Victor & J.H. Ausubel, "Restoring the Forests" (2000) 79 *Foreign Aff.* 127.

7. The Global Commons – Climate Change

The UNFCCC and the Kyoto Protocol

D. Bodansky, “The United Nations Framework Convention on Climate Change: A Commentary” (1993) 18 Yale Journal of International Law 451.

C. Breidenich et al., “The Kyoto Protocol to the United Nations Framework Convention on Climate Change” (1998) 92 A.J.I.L. 315.

M. Grubb & F. Yamin, “Climatic collapse at The Hague: what happened, why, and where do we go from here?” (2001) 77 Int’l Affairs 261.

S. Oberthür & H. Ott, *The Kyoto Protocol: International Climate Policy for the 21st Century* (1999).

H.E. Ott, “Climate change: an important foreign policy issue” (2001) 77 Int’l Affairs 277.

D.G. Victor, *The Collapse of the Kyoto Protocol and the Struggle to Slow Global Warming* (2001).

The Kyoto Mechanisms

D. Driesen, “Free Lunch or Cheap Fix? The Emissions Trading Idea and the Climate Change Convention” (1998) 26 Boston College Envt. Aff. L. Rev. 1.

R. Nordhaus, et al., “International Emissions Trading Rules as a Compliance Tool: What is Necessary, Effective and Workable” (2000) 30 Environmental Law Reporter 10837 [available at <http://www.vnf.com/content/Articles/Articles/danish.pdf>]

J. Werksman, “Greenhouse Gas Emissions Trading and the WTO” (1999) 8 Review of European and International Environmental Law 251.

F. Yamin, “The Kyoto Protocol: Origins, Assessment and Future Challenges” (1998) 7 Review of European and International Environmental Law 113.

F. Yamin, “Equity, Entitlements, and Property Rights under the Kyoto Protocol: The Shape of Things to Come” (1999) 8 Review of European and International Environmental Law 265.

The Compliance Regime

J. Brunnée, “A Fine Balance: Facilitation and Enforcement in the Design of a Compliance Regime for the Kyoto Protocol” (2000) 13 Tulane Environmental Law Journal 223.

J. Werksman, "Compliance and the Kyoto Protocol: Building a Backbone into a Flexible Regime" (1998) 9 Y.B. Int'l Env. L. 48.

South-North Issues

C. Batruch, "Hot Air as a Precedent for Developing Countries? Equity Considerations" (1998-1999) 17 UCLA J. Envtl. L. & Pol'y 45.

P. Cullet, "Equity and Flexibility Mechanisms in the Climate Change Regime: Conceptual and Practical Issues" (1999) 8 Review of European and International Environmental Law 168.

J. Gupta, "North-South Aspects of the Climate Issues: Towards a Constructive Negotiating Package for Developing Countries" (1999) 8 Review of European and International Environmental Law 198.

J. Werksman, "The Clean Development Mechanism: Unwrapping the Kyoto Surprise" (1998) 7 Review of European and International Environmental Law 147.

8. Cross-Cutting Issues – Trade and Environment

From the GATT to the WTO

D. Balton, et al., "Symposium on World Trade and the Environment" (1999) 19 NYL Sch. Journal of Int'l & Comp. Law 163.

S. Charnovitz, "Free Trade, Fair Trade, Green Trade: Defogging the Debate" (1994) 27 Cornell International Law Journal 459.

B.J. Condon, "Reconciling Trade and Environment: A Legal Analysis of European and North American Approaches" (2000) 8 Cardozo J. Int'l & Comp. L. 1.

W. Douma & M. Jacobs, "The Beef Hormone Dispute and the Use of National Standards under WTO Law" (1999) 8 European Environmental Law Review 137.

J.L. Dunoff, "Reconciling Trade with Preservation of the Global Commons: Can We Prosper and Protect?" (1992) 49 Washington and Lee Law Review 1407.

A. Durbin, "Trade and Environment: The North-South Divide" (1995) 37 Environment 16.

D.C. Esty, "Beyond Rio: Trade and the Environment" (1993) 23 Environmental Law 387.

D.C. Esty, *Greening the Gatt: Trade, Environment, and the Future* (Washington: Institute for International Economics, 1994) c. 1-3.

D.A. Motaal, “Trade and Environment in the World Trade Organization: Dispelling Misconceptions” (1999) 8 *Review of European and International Environmental Law* 330.

R. Parker, “The Use and Abuse of Trade Leverage to Protect the Global Commons: What We Can Learn from the Tuna Dolphin Dispute” (1999) 12 *Georgetown International Environmental Law Review* 1.

R. Schwartz, “Trade Measures Pursuant to Multilateral Environmental Agreements: Developments from Singapore to Seattle” (2000) 9 *Rev. Eur. Community & Int’l Envtl. L.* 63.

Symposium on *The United States – Import Prohibition of Certain Shrimp and Shrimp Products Case* (1998) 9 *Y.B. Int’l Env. L.* 3-50.

The Biosafety Protocol

A. Cosbey & S. Burgiel, “The Cartagena Protocol on Biosafety: An Analysis of Results” (An IISD Briefing Note, April 2000) [available at <http://iisd.ca/pdf/biosafety.pdf>]

G.L. Gaston & R.S. Abate, “The Biosafety Protocol and the World Trade Organization: Can the Two Coexist?” (2000) 12 *Pace Int’l L. Rev.* 107.

A.H. Qureshi, “The Cartagena Protocol on Biosafety and the WTO: Coexistence or Incoherence?” (2000) 49 *Int’l & Comp. L.Q.* 835.

James F. Smith, “From Frankenfood to Fruit Flies: Navigating the WTO/SPS” (2000) 6 *U.C. Davis J. Int’l L. & Pol’y* 1.

T. Stoll, “Controlling The Risks of Genetically Modified Organisms: The Cartagena Protocol on Biosafety and the SPS Agreement” (1999) 10 *Y.B. Int’l Env. L.* 82.

9. Cross-Cutting Issues – Compliance and Enforcement

Measuring the Effectiveness of International Environmental Law

R.R. Churchill & G. Ulfstein, “Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law” (2000) 94 *Am. J. Int’l L.* 623.

Gabriela Kütting, *Environment, Society, and International Relations: Towards More Effective International Environmental Agreements* (London & New York: Routledge 2000).

A. Nollkaemper, “On the Effectiveness of International Rules” (1992) 27 *Acta Politica* 49.

P.H. Sand, ed., *The Effectiveness of International Environmental Agreements: A Survey of Existing Legal Instruments* (Cambridge: Grotius Publications Limited, 1992).

State Responsibility

T. Berwick, “Responsibility and Liability for Environmental Damage: A Roadmap for International Environmental Regimes” (1998) 10 Georgetown International Environmental Law Review 257.

A. Boyle, “State Responsibility and International Liability for Injurious Consequences of Acts Not Prohibited by International Law: A Necessary Distinction?” (1990) 39 Int’l & Comp. Law Quarterly 1.

P.M. Dupuy, “The International Law of State Responsibility: Revolution or Evolution?” (1989) 11 Michigan Journal of International Law 105.

United Nations (International Law Commission), *Articles on Responsibility of States for Internationally Wrongful Acts* [provisionally adopted by the Commission on second reading, UN. Doc. A/CN.4/602 (June 2001), <http://www.law.cam.ac.uk/rcil/ILCSR/ARSIWA.doc>]

Promoting Compliance

A.E. Boyle, “Saving the World: Implementation and Enforcement of International Environmental Law” (1991) 3 Journal of Environmental Law 229.

E.B. Weiss & H.K. Jacobson, *Engaging Countries: Strengthening Compliance with International Accords* (Boston: MIT Press, 1998).

A. Chayes & A. Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge: Harvard University Press, 1995).

K. Danish, “Management v. Enforcement: The New Debate on Promoting Treaty Compliance” (1997) 37 Va. J. Int’l L. 789.

G.W. Downs, et al., “Is the Good News about Compliance Good News about Cooperation?” (1996) 50 Int’l Org. 379.

G.W. Downs et al., “The Transformational Model of International Regime Design: Triumph of Hope or Experience?” 38 Columbia Journal of Transnational Law 465.

M. Koskienniemi, “Breach of Treaty of Non-Compliance? Reflections on the Enforcement of the Montreal Protocol” (1992) 3 Yearbook of International Environmental Law 123.

P. Sands, “Enforcing Environmental Security: The Challenges of Compliance with International Obligations” (1993) 15 Journal of International Affairs 46.

D. Shelton, ed., *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (New York: Oxford University Press, 2000).

P. Szell, "The Development of Multilateral Mechanisms for Monitoring Compliance" in Winfried Lang, ed. *Sustainable Development and International Law* (London: Graham & Trotman, 1995) 97.

Normative and Regime-Oriented Approaches Revisited

J.E. Alvarez, "Why Nations Behave" (1998) 19 *Mich. J. Int'l Law* 303.

Pierre-Marie Dupuy, "Soft Law and the International Law of the Environment" (1991) 12 *Michigan Journal of International Law* 420.

T. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1995).

R. Jennings, "The Role of the International Court of Justice in the Development of International Environmental Protection Law" (1992) 1 *Review of European Community and International Environmental Law* 240.

B. Kingsbury, "The Concept of Compliance as a Function of Competing Conceptions of International Law" (1998) 19 *Mich. J. Int'l Law* 345.

H. Hongju Koh, "Why Do Nations Obey International Law?" (1997) 106 *Yale Law Journal* 2599.

J. Setear, "An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law" (1996) 37 *Harvard International Law Journal* 139.

A.M. Slaughter Burley, "International Law and International Relations Theory: A Dual Agenda" (1993) 87 *American Journal of International Law* 205.

Selected Sources on International Environmental Law

[N.B.: Over the past few years, an array of sources - document collections, journals, websites - have emerged and the number of sources is growing continuously. The following lists provide only a selection of those sources, placing emphasis on particularly useful sources.]

1. Document Collections

P. Birnie & A.E. Boyle, eds., *Basic Documents on International Environmental Law* (Oxford: Oxford University Press, 1995) [K 3583 B375 1995 LAW]

Edith Brown Weiss *et al.*, eds., *International Environmental Law: Basic Instruments and References* (Dobbs Ferry: Transnational Publishers, 1992) [(R): K/3583/W45/1992]

W.E. Burhenne, ed., *International Protection of the Environment: Conservation in Sustainable Development* (1995) [K 3583 A1 I58 1995 LAW]

W.E. Burhenne, ed., *International Environmental Soft Law: Collection of Relevant Instruments* (1993) [K 3583 I58 LAW]

David Hunter, et al., eds., *International Environmental Law and Policy* (Treaty Supplement) (New York: Foundation Press, 1998).

B. Rüster & B. Simma, eds., *International Protection of the Environment: Treaties and Related Documents* (Dobbs Ferry: Oceana) (vols. I-XXXI, 1975-1983) [K/3583/A1/I58]

B. Rüster & B. Simma, eds., *International Protection of the Environment: Treaties and Related Documents* (Dobbs Ferry: Oceana) (Looseleaf, 1990-1994) [K/3583/A1/I58/1990 LAW]

P. Sands, et al., eds., *Documents in International Environmental Law* (Manchester: Manchester University Press, 1994) (2 volumes) [K 3583 D63 1994 LAW]

2. JOURNALS

Colorado Journal of International Environmental Law and Policy

Environmental Policy and Law

Georgetown International Environmental Law Review

International Environment Reporter

Review of European and International Environmental Law

[available at <http://www.ingenta.com/journals/browse/bpl/reel>]

Yearbook of International Environmental Law

[K 3581.2 Y32]

3. INTERNET SOURCES

[Many of these sites provide extensive cross-links to other relevant sources and sites; particularly good access sites are highlighted. *P/s. note that the list of sites is up to date as of July 2001.*]

American Society of International Law (*Guide to Electronic Resources for International Law*):
<http://www.asil.org/resource/env1.htm>

Bora Laskin Law Library “International Law Guide I: Treaties and Other Sources of International Law”: <http://www.law-lib.utoronto.ca/resguide/rschguid.htm>

Center for International Environmental Law (CIEL) (US): <http://www.ciel.org/>

Department of Foreign Affairs and International Trade Canada: <http://dfait.gc.ca/>

E-Law (International Network of Environmental Lawyers): <http://www.elaw.org/>

European Union (Environment Policy): http://www.europa.eu.int/pol/env/index_en.htm

Fletcher School of Law and Diplomacy (Multilaterals Project):
<http://fletcher.tufts.edu/multilaterals.html>

Foundation for International Environmental Law (FIELD (UK)): <http://www.field.org.uk/>

Global Environment Facility (GEF): <http://www.gefweb.org/>

Globelaw: <http://www.globelaw.com/sources.htm>

International Centre for Trade and Sustainable Development: <http://www.ictsd.org/>

International Institute for Sustainable Development (IISD): <http://www.iisd.ca>

International Court of Justice: <http://www.icj-cij.org/>

International Joint Commission (Canada – US): <http://www.ijc.org/>

North American Commission for Environmental Cooperation (NAAEC): <http://www.cec.org/>

United Nations: <http://www.un.org>

United Nations Environment Programme (Global Environment Outlook 2000):
<http://grid2.cr.usgs.gov/geo2000/english/>

Westcoast Environmental Law (WCEL): <http://www.wcel.org/>

World Resources Institute (WRI): <http://www.wri.org/>

World Trade Organization (WTO): <http://www.wto.org/>

